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REMARKS

By this amendment, claims 12 and 13 are added to further define aspects of the invention. Currently, claims 1-3, 5, 9, and 11-13 are before the Examiner for consideration on their merits with claims 4, 6-8, and 10 being withdrawn from consideration. New claim 12 is added to define the symmetrical feature of the lens, and this is supported by paragraph [0022] of the specification. Claim 13 is similar to claim 11 and its introduction does not add new matter to the application.

Applicants traverse the rejection on the grounds that the Examiner has not established a *prima facie* case of obviousness against claim 1.

In review, claims 1-3, 5, 9, and 11 are rejected under 35 U.S.C. § 103(a) based on United States Patent No. 2,378,493 to Miles when taken with United States Patent No. 3,147,489 to Nelson. In making the rejection, the Examiner alleges that the only difference between the invention and Miles is the presence of an eye skirt and strap. The Examiner cites Nelson for the teaching of using eye skirts and a strap on safety goggles. The Examiner concludes that it would be obvious to modify the goggles of Miles with the features of Nelson "in order to provide eyewear that can provide alignment to the wearer during sporting activities."

The Examiner also observes that neither Miles nor Nelson teaches that the goggles can be used for swimming, but concludes that "they are both completely capable of being worn while swimming."

The rejection is erroneous for a number of reasons, each reason set out below by

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heading.

Modifying Miles using the skirt of Nelson does not teach all of the features of claim 1.

In the rejection, the Examiner admits that Miles does not teach an eye skirt located around each eye cup. In response to this deficiency, the Examiner cites Nelson as teaching an eye skirt and that it would be obvious to use the eye skirt of Nelson with the lenses of Miles. The problem with this approach is that the eye skirt of Nelson is not designed for water use. Nelson's eye skirt has an opening 18 on each side to prevent fogging of the lenses, see col. 2, lines 45-54. In addition, the skirt has a hole 16 in it for the strap 19. Further, the strap 19 is designed to go through the hole 16 so that a portion of the strap would be between the periphery of the skirt and a user's face, which cannot be a seal to keep water out.

Claim 1 defines swimming goggles that have a skirt configured to be held in close contact with a user's face to form a seal to keep water out of a user's eye. No such skirt is taught in Nelson. The skirt of Nelson is not disclosed as forming a water tight seal and combining Miles and Nelson does not produce swimming goggles with the claimed skirt.

Neither Miles nor Nelson teaches swimming goggles.

In the rejection, it is not completely clear if the Examiner is giving weight to the fact that the claims are directed to swimming goggles. It appears that the Examiner is

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saying that this limitation is met since the goggles of Miles and Nelson can be used for swimming. First, to say that the optical device of Miles can be used for swimming is nonsensical. The function of the optical device of Miles is to view an unclouded sun, see page 2, col. 1, lines 18-20. One of skill in the art would not find any reason to use the optical device of Miles for swimming.

Second, the optical device of Miles cannot be considered to be swimming goggles. While Miles teaches that the device can be used in a number of different optical devices such as binoculars, welder's handshields, field glasses, see page 2, col. 2, lines 22-25, there is no specific disclosure that the optical device of Miles can be used in swimming goggles. Therefore, the Examiner must have some reason to conclude that the optical device of Miles can be used in swimming goggles. Nelson does not provide this motivation since Nelson's goggles are for safety. Even if one of skill in the art would use the optical device of Miles as part of Nelson's lenses, the modified goggles cannot be considered to be swimming goggles. In fact, the Examiner does not have a reason to conclude that the optical device of Miles can be used in swimming goggles and this means that the allegation of obviousness is improper and must be withdrawn.

In fact, using the optical device of Miles in the Nelson goggles would not be completely capable of being used as swimming goggles as alleged by the Examiner since each skirt of Nelson has two holes, one hole 18 for venting and one hole 16 for the strap 19. Therefore, it is error for the Examiner to assert that the Nelson and Miles are completely capable of being used as swimming goggles or that there is a reason for

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using the optical device of Miles in swimming goggles.

It is error to conclude that both intermediate sections can extend between the frame portions (claims 11 and 13)

In the rejection, the Examiner admits that the patches of Miles do not extend across the lens as is required in claim 11 and new claim 13. The Examiner submits that it would be obvious to extend the patches entirely across the eye cup and that such a modification would not alter the function of the eyewear. The allegation that the function of the eyewear is not altered is mistaken. Miles clearly teaches on page 1, col. 2, lines 40-51 that the longer axis of one patch is at right angles to the longer axis of the other patch. In the Examiner's allegation that both patches could extend entirely across the lens means that the longer axis of each path are coincident with each other, not at right angles. Taking Figure 4 as an example, extending patch 31b across the width of the lens means that its long axis is coincident with the long axis of patch 31a. This defeats the purpose of the teachings of Miles and makes the device inoperative. Therefore, it is error for the Examiner to allege that the function of the optical device of Miles is not altered when the patches are made to extend completely across the lens. This means that there is no basis to reject claims 11 and 13 and these claims are separately patentable over the applied prior art.

Miles does not teach the symmetric arrangement of claim 12.

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New claim 12 requires that the intermediate sections are symmetrical about a vertical axis located between the lenses. This feature is not found in Miles since Miles requires the patches to be at right angles to each other. This right angle relationship cannot be considered to be a symmetric one as is required by claim 12.

Moreover, since the right angle relationship of the patches of Miles is an essential feature of the optical device for its proper functioning, there is absolutely no reason why one of skill in the art would be led to make the patches symmetric about a vertical axis as is recited in claim 12. Nelson does not provide any reason to modify Miles. Therefore, claim 12 is separately patentable over the applied prior art.

Summary

In review, a *prima facie* case of obviousness is not established against claim 1 since Miles and Nelson do not collectively teach all of the features of claim 1, and particularly the fact that claim 1 is directed to swimming goggles that have a particularly configured eye skirt. Claims 11 and 13 are separately patentable over Miles and Nelson since Miles cannot be modified to meet the limitations of these claims. Claim 12 is also patentable since the claimed symmetry of the intermediate sections is not found in Miles regardless of whether Nelson is combined with Miles.

Also, since generic claim 1 is allowable, the election of species requirement must be withdrawn so that all claims are allowed.

Accordingly, the Examiner is respectfully requested to examine this application in

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light of the remarks made above, and pass all pending claims onto issuance.

If the Examiner believes that an interview would be helpful in expediting the allowance of this application, the Examiner is requested to telephone the undersigned at 202-835-1753.

The above constitutes a complete response to all issues raised in the Office Action dated April 29, 2008.

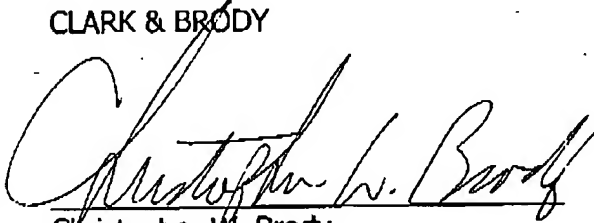
Again, reconsideration and allowance of this application is respectfully requested.

Please charge any fee deficiencies to Deposit Account No. 50-1088 and credit any excess fees to the same account.

Respectfully submitted,

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By



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